

§ 301.6231(c)-1 Special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits.

(a) *Application subject to this section.* This section applies in the case of an application under section 6411 (relating to tentative carryback and refund adjustments) based on losses, deductions, or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to an application based upon the original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).

(b) *Determination of special enforcement area.* In the case of an application under section 6411 described in paragraph (a) of this section, precluding an assessment under section 6225 that would be permitted under section 6213(b)(3) (relating to assessments arising out of tentative carryback or refund adjustments) with respect to any amount applied, credited, or refunded as a result of the application may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes due more difficult. Consequently, the Secretary hereby determines that such applications present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Assessment permitted under section 6213(b)(3).* Notwithstanding section 6225

(relating to restrictions on assessment with respect to partnership items), an assessment that would be permitted under section 6213(b)(3) with respect to any amount applied, credited, or refunded as a result of an application described in paragraph (a) of this section may be made before there is a final partnership-level determination with respect to the losses, deductions, or credits on which the application is based. As provided in section 6213(b)(1), the Internal Revenue Service shall mail notice of any such assessment to the partner filing the application. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items—*(1) *In general.* A partner to whom the Internal Revenue Service mails a notice of suspension of action on a refund claim under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as

nonpartnership items because of notification of an assessment under section 6213(b)(3);

(ii) Identify the partnership by name, address, and taxpayer identification number;

(iii) Identify the partner making the election by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election applies; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-1T contained in 26 CFR part 1, revised April 1, 2001.

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§ 301.6231(c)-2 Special rules for certain refund claims based on losses, deductions, or credits from abusive tax shelter partnerships.

(a) *Claims subject to this section.* This section applies in the case of a claim for credit or refund based on losses, deductions or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to a claim that is based upon the partner's original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment). For purposes of this section, any income tax return requesting a credit or refund shall be

treated as a claim for a credit or refund.

(b) *Determination of special enforcement area.* Granting a claim for credit or refund described in paragraph (a) of this section may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes more difficult. Consequently, the Secretary hereby determines that such claims present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Action on refund claims suspended.* In the case of a claim described in paragraph (a) of this section, the Internal Revenue Service may mail to the partner filing the claim a notice stating that no action will be taken on the partner's claim until the completion of the partnership-level proceedings. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items—(1) In general.* A partner to whom the Internal Revenue Service mails a notice of suspension under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.